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## REMARKS

In the Final Office Action dated July 31, 2007, claims 1-8 and 20-23 stand rejected under 35 USC 103(a) as being unpatentable over Densert et al (US 6,159,171) (Densert) in view of Galiana et al. (US 5,942,954)(Galiana). In particular, the Office Action asserts that although Densert fails to teach or suggest a stabilized head-dependent wearable frame structure configured to control a visual input by at least partially obstructing the subject's normal visual range, Galiana discloses the recited claim limitations that are missing from Densert. The applicant respectfully submits that the references simply do not support the assertion, and that a person having ordinary skill in the art (PHOSITA) will readily recognize that the asserted rejections are without proper basis.

As a preliminary observation, the applicant notes that the Examiner continues to use the terminology "head-dependent wearable frame structure" in the Office Actions. The applicant cannot properly respond to the Examiner's assertions in this regard because the Examiner's terminology is completely foreign to the applicants claims (no such limitation exists in the claims). "To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)(MPEP 2143.03). Further,

"It is important for an examiner to properly communicate the basis for a rejection so that the issues can be identified early and the applicant can be given fair opportunity to reply. [ ] Since patent examiners cannot normally be compelled to testify in legal proceedings regarding their mental processes (see MPEP § 1701.01), it is important that the written record clearly explain the rationale for decisions made during prosecution of the application. (MPEP 706.02(J))

The applicant cannot assume to know what the examiner means by "head-dependent", and therefore cannot concede or properly respond to the assertion, and further asserts that the examiner has not yet presented a *prima facie* case for proper rejection under 35 U.S.C. § 103(a) of the applicant's recited claims.

Even assuming that the Examiner is correct with regard to what the Densert patent discloses, which the applicant does not concede, the applicant additionally and more specifically argues that Galiana fails to disclose applicant's recited claim limitations that the Final Office Action expressly concedes are missing from Densert.

In particular, Galiana fails to teach or suggest at least a "head-wearable frame structure . . . configured to control visual input by at least partially obstructing the subject's normal visual range" as recited in independent claim 1. Relevant to the discussion below, it

is important to point out that *displaying a target to a subject does not inherently partially obscure the subject's visual range*, nor does Galiana explicitly so teach or suggest.

Firstly, although the examiner asserts that "Galiana teaches and shows (as best seen in Figures 3 and 4, right) a vestibular measuring/modifying device . . . configured to control a visual input via a display (12) by at least partially obstructing the subject's normal visual range" (Office Action, page 3, section 8), *Figures 3 and 4 do not depict a display (12) at all*. In fact, Figures 3 and 4 of Galiana fail to depict any element, structure, or feature that would be reasonably understood by a PHOSITA as "configured to control visual input by at least partially obstructing the subject's normal visual range".

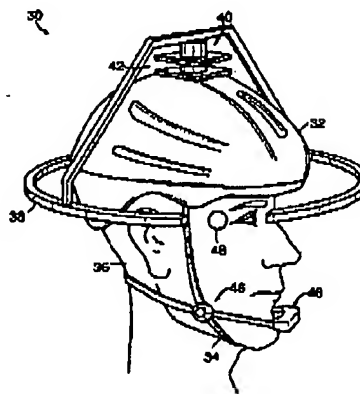


FIG. 3

For example, a PHOSITA simply cannot derive any structural, positional or other relationship between the asserted display (12) and the subject matter of Figures 3 or 4. The figures do not depict a size, position, quantity, separating distance, or any other physical relationship between the asserted "head-dependent wearable frame structure" of Galiana and an asserted display (12). Does the Examiner suggest that a target display 12 partially obscures the subject's normal visual range? Figures 3 and 4 simply do not support this suggestion because they do not depict or suggest the presence or configuration of any target displays. Nor does the specification compensate for the omissions of Figures 3 and 4 in this respect..

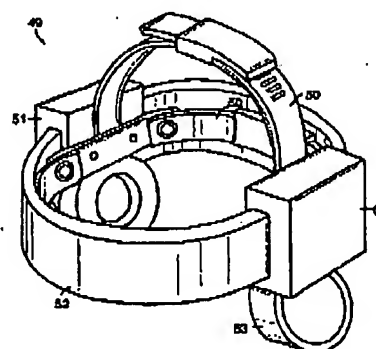


FIG. 4

Rather than being the "best depiction" as asserted in the Final Office Action, Figures 3 and 4 are notable in that they completely fail to provide support for the assertions. The applicant simply cannot discern a basis in Figures 3 and/or 4 for the Examiner's assertion in the Final Office Action.

Secondly, while the block diagram of Figure 1 (below) does depict a "Target Display" 12, the block diagram does not in anyway teach or suggest a visual-range-obscuring positional or structural relationship between the target display 12 and either the inertial head perturber 30 of Figure 3 or the Lorentz force perturber 49 of Figure 4. In fact, the perturbers 30/49 of Figures 3 and 4 can reasonably be interpreted as being structurally separate and

independent from the target display(s) 12, and are depicted separately in Figure 1. The absence of visual targets in Figures 3 and 4 suggests that the perturbors of Galiana are not configured to include the target displays at all, and certainly fails to teach or suggest such relationship.

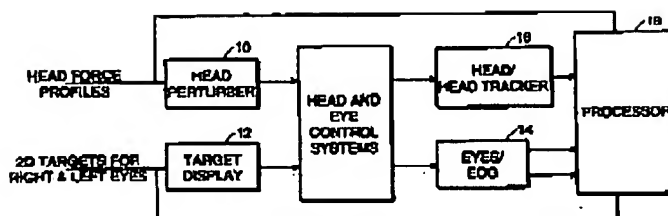


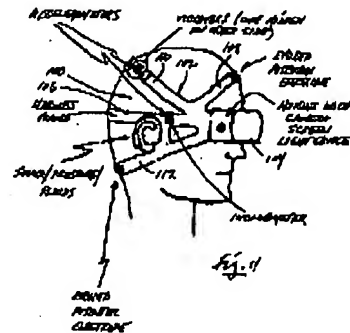
FIG. 1

In summary, Figures 1-4 collectively fail to depict or suggest a "head-wearable frame structure . . . configured to control visual input by at least partially obstructing the subject's normal visual range". Because "all the claim limitations must be taught or suggested by the prior art" in order to "establish [a] *prima facie* obviousness of a claimed invention, and the asserted references fail to disclose a "head-wearable frame structure . . . configured to control visual input by at least partially obstructing the subject's normal visual range", the combined references fail to establish a *prima facie* case of obviousness. Even if the target display(s) of Galiana can be construed to at least partially obstruct a subject's normal visual range, which the applicant does not concede and Galiana does not teach or suggest, Galiana completely fails to teach or suggest that the asserted "head-dependent wearable frame structure" is configured to includes such target displays or any other feature "configured to control visual input by at least partially obstructing the subject's normal visual range".

In light of the failings of the figures, the assertions in the Final Office Action can only be asserted through improper hindsight in light of the applicant's specification, figures, and claims. The figures of Galiana simply do not teach or suggest applicant's indicated claim limitation, and do not support the assertions.

Thirdly, the specification of Galiana completely fails to supply the teaching and/or suggestion missing from Densert with regard to the applicant's recited claim limitations. The Final Office Action states that "Galiana teaches . . . partially obstructing the subject's normal visual range (column 2 line 39 – column 3 line 32 and column 4 lines 37-52). However, the only portion of the first cited section (column 2 line 39 – column 3 line 32) that arguably refers to a subject's visual range states, "Displaying to the subject at least one target undergoing slow random motion", (column 2, lines 43-44 and column 3, lines 6-7).

The cited section utterly fails to disclose partially obstructing the subject's normal visual range as asserted in the Office Action. Rather, it suggests supplying a target somewhere within the subject's normal visual range. As stated above, displaying a target to a subject *within* the subject's normal visual range does not inherently partially obscure the subject's visual range, nor does Galiana explicitly so teach or suggest. Galiana completely fails to provide a structural nexus between a head wearable frame structure and the asserted target displays. By contrast, a PHOSITA will clearly recognize, particularly with respect to applicant's Figures 1 and 11 (at right), a "head wearable frame structure" configured to "at least partially obstruct the subject's normal visual range" as recited in applicant's claims.



The second cited section (column 4 lines 37-52) states only that, "Display 12 preferably includes, by way of example, heads-up dual chromic display panels able to provide randomized retinal errors, the display panes being individually controlled for each eye, with up to  $\pm 40$ -degree retinal deviations", (column 4, lines 48-52). While Galiana describes providing some form of visual input (said target displays 12), Galiana fails to disclose a "head-wearable frame structure . . . configured to control visual input by *at least partially obstructing the subject's normal visual range*", (emphasis added). Again, displaying a target to a subject does not inherently partially obscure the subject's visual range, and neither does the reference explicitly describe obscuring a subject's visual range. Nor do any other portions of the cited references support the rejections or assertions presented in the Final Office Action.

The Final Office Action only cites the sections and the figures generally, without providing any technical reasoning grounded in the Galiana reference and/or known to a PHOSITA to support the assertions in the Final Office Action. Nor can such reasoning be provided, for it does not exist in the asserted references. Thus, because the Final Office Action explicitly concedes that Densert does not disclose applicant's recited "head-wearable frame structure . . . configured to control visual input by at least partially obstructing the subject's normal visual range", and Galiana fails to teach or suggest the same, the combined references fail to establish a proper *prima facie* case for rejection of claim 1 under 35 U.S.C. § 103(a).

For at least the reasons presented herein, the applicant respectfully requests withdrawal of the asserted 35 U.S.C. § 103(a) rejection from claim 1, as well as from claims 2-6 which depend from and include the distinguishing limitations of claim 1. Further, inasmuch as independent claim 7 similarly recites "frame structure wearably securable to a subject's head . . . and configured to control visual input by at least partially obstructing the subject's normal visual range", and independent claim 20 similarly recites "headgear worn by a subject, including frame structure seated . . . on the subject's head and configured to control visual input by at least partially obstructing the subject's normal visual range", the applicant respectfully submits that the Final Office Action likewise fails to establish a *prima facie* case required for a 35 U.S.C. 103(a) rejection of claims 7 and 20. Therefore, the applicant also requests withdrawal of the rejections from claims 7 and 20, as well from claims 6 and 21-23 which depend from and include the distinguishing limitations of claims 7 and 20, respectively.


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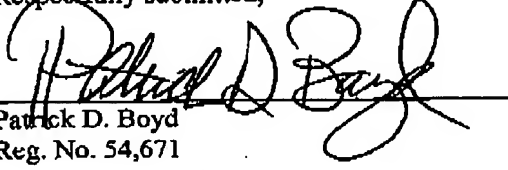
## CONCLUSION

Accordingly, applicant respectfully submits that all claims are allowable as originally or previously presented, and requests allowance of the claims without undue delay. The Examiner is encouraged to telephone the undersigned at (503) 226-8468 if it appears that an interview would be helpful in advancing the case.

I hereby certify that this correspondence is being transmitted to the U.S. Patent and Trademark Office via facsimile number 571-273-8300 on the following date: August 17, 2007

  
NAME

Respectfully submitted,

  
Patrick D. Boyd  
Reg. No. 54,671

Customer No. 35940